

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Lockheed Martin Corporation,	)	
COMSAT Corporation, and	)	IB Docket No. 02-87
COMSAT Digital Teleport, Inc., Assignors	)	
and	)	
Intelsat, Ltd.,	)	
Intelsat (Bermuda), Ltd.,	)	
Intelsat LLC, and	)	
Intelsat USA License Corp., Assignees	)	
	)	
Applications for Assignment of Earth Station	)	
and Wireless Licenses and Section 214	)	
Authorizations and	)	
Petition for Declaratory Ruling	)	

**REPLY OF LITIGATION RECOVERY TRUST**

Litigation Recovery Trust ("Petitioner" or "LRT"), on behalf of its members and its associated entities<sup>1</sup>, hereby submits its Reply to the Opposition to Petition For Reconsideration of the Order and Authorization ("Intelsat Order") in this proceeding (referred to herein as the "Comsat Intelsat Proceeding") submitted by Lockheed Martin Corporation ("Lockheed"), Comsat Corporation and Comsat Digital Teleport, Inc. (collectively, "Comsat" and, with Lockheed, "Assignors"), and Intelsat, Ltd., Intelsat (Bermuda), Ltd., Intelsat LLC, and Intelsat USA License Corp. (collectively, "Intelsat" or "Assignees" and, together with Assignors, "Applicants").

**1. INTRODUCTION**

Applicants seek to explain away in the most cavalier manner all of LRT's arguments, which clearly establish that Comsat and Lockheed are not only unqualified to receive the

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<sup>1</sup> Litigation Recovery Trust represents the rights and claims of certain individuals, and includes certain entities. On December 30, 2002, LRT, along with Television News Syndication Corporation and others, became a founder of Communications Science and Technologies, Inc. (CST). As one of its first actions, CST has developed a plan to provide additional funding to the Digital Conversion Trust, which was previously proposed by LRT in this and other proceedings involving Comsat. As outlined in Section 3 herein, CST has submitted its plan in its Comments filed in the Commission's 2002 Biennial Regulatory Proceeding (Docket No. 02-277). LRT delayed the filing of this Reply until the submission of the referenced CST Comments. LRT has not sought leave for this slight delay, as it does not believe such a filing to be necessary. The Applicants, having already closed on the sale and transfer of the Comsat assets, clearly will not be prejudiced in any way by LRT's delay in submitting the instant filing.

assignment grants sought in the instant proceeding, but more importantly, long ago, the companies should have been found to have forfeited any right to continue as licensees and permittees. In point of fact, Comsat stands before this Commission totally disgraced as a licensee. It has heretofore been established that :

1. Comsat operated a criminal enterprise. (Comsat's Florida subsidiary, Electromechanical Systems, Inc., confessed to felony charges for defrauding the US Government and obstructing justice, was ordered to pay millions of dollars in fines and restitution, and was placed on probation for five years.)
2. Comsat has admitted to filing false information with the Commission. (This matter has been referred to the Enforcement Bureau)
3. Comsat for over a decade operated a business that distributed pornography to hotels throughout the country. (An LRT rulemaking petition originally submitted in December 1995 addressing this matter remains before this Commission.)
4. Comsat purposely filed false information concealing the involvement of its senior management in controlling its enterprise in Florida. (As shown in information heretofore presented to the Commission and in the official filings with the State of Florida included in Exhibit 1 hereto, the senior managers of Comsat, i.e. its president and general counsel, and other ranking company officials directly participated in the control of the Florida subsidiary.)
5. Comsat for some 18 months concealed its involvement in federal criminal proceedings (Comsat was the subject of a federal grand jury proceeding dating from January 1999, but failed on successive occasions to file necessary information in its filings with the Commission.)

Neither Comsat nor its owner, Lockheed, is qualified to participate in the instant transaction. Based on the information presented in the Petition and as supplemented herein, Petitioner seeks the revocation of the grant of the subject Applications and the adoption of strict conditions as defined in the proposed protective orders heretofore submitted by LRT.

LRT restates its request that the Commission adopt necessary protective orders with respect to the future operations of Comsat licenses and assets by Intelsat, and the determination, through investigation and evidentiary hearing, of the liability, if any, of Comsat and Lockheed and their officials with respect to the filing of the subject Applications.

## 2. Failure of Applicants to Refute the Errors Set Forth in Petition

Applicants have sought to explain away the serious of fundamental errors, which LRT found in the Order, any one or combination of which would support the revocation of the license grants under review herein. Applicants have sought to cite Commission language, which

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they contend has previously disposed of LRT arguments. Of course, this approach neatly cites an original error as authority for disposing of the Petition,. Such an action, of course, is legally infirm. But, it is obviously the only method available to explain away such a history of illegal activities by Comsat , as later compounded by Lockheed, its new (however fleeting) owner.

As was made clear in the Petition, LRT has submitted new information to establish a series of material errors in the Order, which must be found to support revocation.

These vital errors – not refuted by Applicants- include the following:

#### Error 1. Failure to Properly Review Expansion Plans of Assignee

For over six months, LRT has submitted evidence to the Commission with reference to Intelsat's plans to acquire Eutelsat. Shortly following the submission of the Petition, these plans were confirmed by Intelsat:

*10 Dec 2002* Intelsat has announced it will place a firm offer to buy its European rival Eutelsat by 13 December 2002. Intelsat's proposal is estimated between EUR/US\$3 billion and EUR/US \$3.5 billion including debt. SATCOM Online.  
<http://216.239.33.100/search?q=cache:ZhS70oNslkoC:www.satcom.co.uk/news.asp+intelsat+to+buy+Eutelsat+December+2002&hl=en&ie=UTF-8>

LRT filed a motion to suspend action on the Applications, pending solicitation of additional comments.<sup>2</sup> In its Order, the Commission denied LRT's motion, finding that, " Press reports speculating on possible future acquisitions by Intelsat, Ltd. are not a basis to delay action in this proceeding." LRT finds this ruling to be in error, especially in view of the latest news confirming the Intelsat expansion plans.

With Intelsat's confirmation of its plans, the Commission must come to the realization that the general reordering of the satellite industry can be expected to follow in short order. Intelsat is participating in the creation of the world's largest and most dominant satellite operating company. Based on sales figures reported by Space News (dated January 5, 2003) and included in Exhibit 2 herein, a combination of Intelsat and Eutelsat would produce aggregate annual billings exceeding \$1.8 billion. If one adds the billings of Comsat World Systems to this number, the new Intelsat combine will jump to annual revenues well in excess of \$2 billion. These combined revenues will dwarf all US participants including PanAmSat (\$870

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<sup>2</sup> Motion to Postpone Further Action Pending Solicitation of New Round of Comments (filed Sept. 23, 2002).

MM), SES Americom (\$506 MM), and Loal Skynet ((\$488 MM).

LRT has cautioned the Commission throughout this proceeding that full consideration should be given to Intelsat's potential future expansion plans. These plans are now becoming a reality.

Clearly, the Commission should reopen this proceeding to reconsider all issues related to Intelsat's expansion plans. The Commission has initially authorized the transfer of assets to an Intesat that was roughly the size of PanAmSat. It did not consider approving the assignment of Comsat licenses to an expanded Intelsat that was the largest world carrier, totally dominating all US entrants. Intelsat's intentional concealment of these critical plans throughout this proceeding is a matter requiring full investigation. Intelsat's planned acquisition of Eutelsat presents a material change in the applicant, a matter which must be reviewed by the Commission, resulting either in the adoption of a series of conditions to protect the competitive interests of US carriers or the outright rejection of the Applications.

Without question, the Commission has the primary responsibility to review all aspects of Intelsat's current and planned operations to determine the potential impact on competing carriers within the U.S. A combined Intelsat/Comsat/Eutelsat entity will be far different in size, scope and economic power from the combined Intelsat/Comsat, which is the Applicant herein.

It is critical that the Commission ascertain the facts and circumstances related to Intelsat's plans to expand its operations through other acquisitions, including the possible merger with Eutelsat. The failure of the Commission to undertake such an inquiry is a violation of its delegated authority.

This error also renders its Intelsat Order defective as the Commission has failed to make the necessary and properly informed ruling concerning the ultimate competitive effects, which the proposed transaction will have upon the competing licensees under its jurisdiction.

#### Error 2 : Misidentification of Ultimate Party in Interest.

In its Petition, LRT argued that Applicants incorrectly stated information regarding the true parties in interest. Lockheed has issued public notices to the effect that the former Comsat "parent" organization, Lockheed Martin Global Telecommunications, LTD. (LMGT) was

closed in December 2001, upon action of the Board of Directors of Lockheed.<sup>3</sup> Applicants in their Opposition seek to address this point, however, in the end, they fail to provide sufficient information to put the point to rest.

Applicants state that LMGT continues to exist “as a legal entity today.” (Opposition, p 9) However, they fail to state whether it is a dormant, i.e , non-operating, or an operating entity. Based on public information, it would appear that LMGT ceased operating in December 2001, discharged its personnel and wound down its affairs. The fact that a shell company called LMGT has not as yet been dissolved as a legal entity does not answer the LRT argument.

The Commission should commence an inquiry to determine the exact status of LMGT and ascertain the accuracy and truthfulness of prior filings made (or not made) on its behalf in this proceeding and representations made in the Opposition. Where it became known that a licensee submitted an application under the name of a dormant, non-operating entity, the Commission would certainly be expected inquire into such a misrepresentation. This is no different a case.

### Error 3. Failure To Seek Guidance of Congress Before Authorizing Assignment of US Licenses to Foreign Controlled Company

In the Petition, LRT established that the Commission's actions granting the Applications constituted a failure to properly enforce and administer 47 USC § 310 as required by Congress. This failure is established on the record and can only be properly addressed by a reopening of this proceeding and seeking the formal guidance of Congress.

Applicants did not address this matter in the Opposition.

The Congress is on record that it expects that the Commission will not permit the assignment of US licenses to companies where more that 25% of its equity is owned by foreign interests consistent with § 310 (b) of the Communications Act (47 USC § 151 et seq.)<sup>4</sup>. The

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<sup>3</sup> See Lockheed Press Announcement, December 7, 2001: [http://www.lockheedmartin.com/news/articles/120701\\_1.html](http://www.lockheedmartin.com/news/articles/120701_1.html)

<sup>4</sup> The 106th Congress considered the matter of ownership of US telecommunications companies by foreign governments. These complex issues were addressed by the Subcommittee on Telecommunications Trade & Consumer Protection of the House Commerce Committee in hearings on Foreign Government Ownership of

Commission in its Order proposes to violate the 25% benchmark without consulting Congress. This action constitutes a direct violation of the Commission's delegated authority, voiding the Order.

Error 4: The Commission Failed to Make Proper Assessment to Determine

Whether the Proposed Assignments Are in the Public Interest

In considering the Applications, the Commission is required to determine, pursuant to section 214(a) and section 310(d) of the Act, whether the proposed assignments will serve the public interest.<sup>5</sup> However, notwithstanding the pleadings filed by LRT requesting that the Commission undertake a complete investigation and review of the transaction documents, it has failed to do so. This failure constitutes error and grounds for revoking the Order and commencing supplementary proceedings.

Applicants failed to address this matter in their Opposition.

The combined failure of the Commission to review the transaction documents and to allow interested parties a similar right constitutes a violation of the Commission's delegated responsibilities and renders its action in issuing the Order void.

Error 5: The Commission Disregarded Evidence Central to

Finding Comsat Unqualified to Hold a Communications License

LRT has clearly established in its Petition and the Comsat-Lockheed Merger Proceeding that Comsat had deliberately and repeatedly violated applicable statutes and rules. The key error that has been cited by LRT<sup>6</sup> was the Commission's failure to find Comsat guilty of filing a series of its Form 312 Satellite Station Transfer Applications, which included false

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American Telecommunications Companies on September 7, 2000. Chairman Tom Bliley (R-Va) observed as follows:

The process of full privatization is taking far too long and the various bills pending in Congress indicate that our patience is running out. The time has come for governments to get out of the telecom services business. Congressman Tom Bliley, Opening Statement, September 7, 2000, [http://com-notes.house.gov/cchear/hearings106.nsf/Hearing\\_Expand?OpenView&StartKey=6C4FBE39CAE97C9C8525694D006F91C9](http://com-notes.house.gov/cchear/hearings106.nsf/Hearing_Expand?OpenView&StartKey=6C4FBE39CAE97C9C8525694D006F91C9), emphasis added.

<sup>5</sup> 47 U.S.C. §§ 214(a), 310(d).

<sup>6</sup> See the Petition and the LRT Motion for Correction, Clarification and Retraction (LRT Motion) in the Comsat-Lockheed Merger Proceeding (a copy of the LRT Motion was appended to the Petition).

information representing that Comsat was not a party to a criminal proceeding, when, in fact, Comsat (through its Florida subsidiary) had been the subject of a federal criminal grand jury proceeding dating to January 1999.

The Commission in its Reconsideration Order erroneously found that Comsat was only required to disclose criminal convictions. However, the rules and the applicable Form 312 Applications specifically require the filing of information concerning all *pending* criminal proceedings. This obvious error on the part of the Commission has not been addressed by the Applicants in the Opposition.

The facts and issues raised by LRT in this proceeding relate directly to Comsat's actions, which should be found to constitute the basis for disqualifying it as holder and assignor of Commission licenses and authorizations. For the Commission to fail to cite these facts and issues, and find Comsat qualified to continue as a licensee is in error. This matter was not dealt with in the Opposition.

Without question, Comsat's history of past illegality, including the deliberate concealment of criminal activities, should be found to constitute grounds for disqualification, resulting in the revocation of the licenses and authorizations at issue in this proceeding.

LRT has requested that the entire proceeding be made the subject of a full evidentiary hearing leading to revocation of all Comsat licenses. Additionally, Lockheed's participation in these actions following the completion of the merger in August 2000 should result in its licenses being noticed for hearing as well. LRT again requests that such proceedings be commenced forthwith.

#### Error 6: The Commission Failed To Complete a Proper Competitive Analysis

In the present case, LRT has introduced evidence showing that Intelsat fully intends to acquire Eutelsat to expand its operational reach. This issue having been raised, the Commission is clearly obligated to (1) inquire into Intelsat's expansion plans and (2) conduct a full competitive analysis to determine the impact of such additional transactions on domestic and international carriers.

This matter was not addressed in the Opposition.

As noted, the Commission dismissed the Eutelsat expansion issue as properly raised by LRT without consideration.<sup>7</sup> Both WorldCom and Sprint raised similar concerns. The Commission's failure to fully consider these matters constitutes reversible error.

In order to complete a full competitive assessment as required, the Commission must undertake a full investigation of Intelsat's expansion plans, and the effects, which such actions will likely have upon competition, especially US carriers. Such an investigation must include a review of all Intelsat board minutes in which the Eutelsat acquisition and any other similar transactions were discussed. Further, the Commission must review all documents submitted to Eutelsat by Intelsat in connection with its acquisition plan. The grant Order should be revoked and a full and detailed investigation as outlined should be immediately commenced.

#### Error 7: The Commission Has Erroneously Found that the Intelsat

##### Acquisition of Comsat Is Consistent with the ORBIT Act

LRT maintains that the Commission was in error in finding that the assignment of Comsat licenses to Intelsat achieves public interest benefits and that its ruling violated the ORBIT Act. Applicants did not consider these matters in the Opposition.

In the Petition, LRT cited Congressional history showing that the Comsat-Lockheed merger was authorized in 1998 as a way to rescue Comsat from its then precarious financial position. What Congress obviously foresaw was Lockheed providing significant resources – financial and otherwise- to literally save Comsat from its impaired state and allow it to reclaim its former leadership position in the communications industry.

What LRT continues to maintain is that the proposed Intelsat acquisition of Comsat's primary operating assets was never contemplated by the Congress. Further, the proposed transaction is directly contrary to the objectives of the authors of the ORBIT Act.

It was clearly the express purpose of Congress to authorize Lockheed's acquisition of Comsat so as to create an independent, financially strong and technologically advanced company, which could aggressively compete with the other satellite based carriers. This goal

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<sup>7</sup> Intelsat Order, ¶ 52



will not be achieved by the proposed transaction. Comsat will in actuality disappear from the scene and, as a direct result, competition will not be enhanced, will be reduced.

The Applicants fail to address this critical issue in their Opposition. LRT maintains that it is highly unlikely that the Congress would ever have given approval to a proposal to allow Comsat, the country's first ,and formerly leading, satellite company, to be broken up and acquired in large part by Intelsat, a foreign controlled entity.<sup>8</sup> The proposed transaction , which in effect increases the interests of Intelsat through its acquisition of Comsat's primary operating assets, is directly contrary to the express goals and interests of the Congress.

The Commission is in error to conclude that the proposed transaction is consistent with the goals and objectives of the ORBIT Act. Applicants have not refuted this position. For this reason alone, the Intelsat Order should be revoked.

Error 8: Based on Comsat's Past Conduct, the Commission Should  
Grant Petitioners' Requests for Strict Regulation of Future Activities

LRT has taken the position that the history of Comsat's past misfeasance, malfeasance and illegality, extending to criminal convictions, should – in the event the proposed transaction is eventually authorized- result in the adoption in a series of protective orders granting the relief sought by petitioners.

Applicants' Opposition fails to address this past history of corporate misdeeds in any way. Comsat – either directly or indirectly- is a convicted felon and violator of federal laws and Commission regulations. This was a government sponsored enterprise that became the worst type of a corporate actor, misusing its economic powers and the law (and its unique status as a quasi-governmental entity) to take unfair advantage of and even seriously harm its competitors, clients, business partners and suppliers.

It is time that this past history, which has not been addressed by Applicants, be considered by the Commission, and steps should be taken to assure that such egregious conduct is not replicated. Provisional remedies such as those referenced by LRT should be adopted.

### Error 9: The Commission Has Failed To Properly Limit Foreign Control of Intelsat

Applicants have identified proposed indirect foreign investment in Intelsat LLC that would exceed the twenty-five percent benchmark set by section 310(b)(4). The Commission has concluded that it would serve the public interest to approve the assignment applications notwithstanding the identified indirect foreign ownership of Intelsat LLC. As outlined in detail in the Petition, this finding is in error, constituting grounds for revoking the Order.

This matter was not addressed by the Applicants.

The Commission has confirmed that the Applicants did not submit a formal principal place of business showing for Intelsat, Ltd. or its foreign subsidiary holding company. The Commission cannot make any documented finding with respect to relevant performance test without the said submissions. The Opposition does not refute this point. The Commission's finding is without factual basis and in error. The Order must be rescinded for this reason.

The Commission also premised its rationale on various representations made by Applicants concerning stock ownership interests in Intelsat.<sup>9</sup> As outlined in the Petition, a review of documents submitted by Lockheed to the US Securities and Exchange Commission reveal that its 24.05% stock interest in Intelsat is carried on the Lockheed balance sheet as an asset *subject to liquidation*. This corporate decision by Lockheed to liquidate its Intelsat stock interest has been confirmed in public statements issued by Intelsat in connection with its planned initial public offering. These matters were not addressed in the Opposition filing.

The Commission has therefore been placed on notice by the actions of both Lockheed and Intelsat that any assumptions concerning the future composition of Intelsat shareholders cannot be based on present shareholder data. Therefore, its conclusions as set forth in the Order are in error. This matter should be the subject of an independent inquiry by the International Bureau.

Furthermore, as outlined in detail in the Petition, information placed on public record concerning future stock sales by Intelsat members in general and Lockheed in particular establishes that the representations made to the Commission by the Applicants are purposely misleading, and in fact false. This matter was not addressed in the Opposition. The Applicants should be sanctioned for submitting such incomplete and false data.

In the Order, the Commission also referenced other stock ownership data submitted by

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<sup>9</sup> See Cong. Rec.: March 9, 2000 (House)] [Page H902], emphasis added

Applicants.<sup>10</sup> LRT finds this data also to be purposely misleading in view of the fact that the Applicants know fully that various ownership changes will take place immediately upon the closing of the planned Intelsat *ipo*. Applicants failed to respond to this point in the Opposition. The actions taken by Applicants should be sanctioned.

LRT has further argued that grant of the Applications would result in noncompliance with section 310(b)(4). LRT contends that the joint ownership of Intelsat, Ltd. by several foreign entities, including foreign governmental entities, could result in a government entity increasing its spending for communications services at price levels that would subsidize Intelsat LLC, leading to an artificial and anti-competitive increase in Intelsat LLC's market share, adversely impacting other competitors.<sup>11</sup> Applicants did not respond to this point in the Opposition.

LRT has presented documentary evidence in a companion proceeding (the Comsat-Telenor License Assignment proceeding), showing that a government owner of Inmarsat had made an uneconomic bid to secure a contract offered by the North Atlantic Treaty Organization. Such evidence directly supported the conclusion that direct and indirect ownership of satellite carrier organizations by governmental entities can result in anti-competitive trade practices, contrary to the public interest.

In the present proceeding, the Commission has rejected, out of hand, LRT's government dominance objections. This constitutes error. Serious dangers exist wherever a government assumes direct or indirect control over an entity. For the Commission to fail to prohibit such anti-competitive practices (and threats of such actions) by limiting total foreign government ownership of communications companies to no more than 25% of the outstanding equity constitutes error and constitutes grounds for reversing the Order.

LRT has also noted that the Commission's analysis of predatory practices is overly simplified and not applicable to the present market conditions. LRT has submitted evidence establishing that a government controlled company with call on significant debt and equity reserves can, through uneconomic bids (loss leader bids), secure new business, thereby injuring private sector competitors. Such use of economic power by a government entity is unfair and wrong. For the Commission to fail to reveal the potential for abuse by an

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<sup>9</sup> See Petition, pp 13.14

<sup>10</sup> According to the revised shareholder list, entities from non-WTO Member countries, including WTO Observer countries, indirectly hold, in the aggregate, 6.07% of the equity and voting interests, well under the twenty-five percent threshold of non-WTO Member ownership and voting established by the *Foreign Participation Order*.

<sup>11</sup> LRT Provisional Petition at 20-31.

expanded (and likely dominant) Intelsat constitutes error. This matter was not addressed in the Opposition.

Error 9 : National Security, Law Enforcement, Foreign Policy and Trade Policy Concerns

In its Petition, LRT noted that the Order presented incomplete information to establish whether the Commission's decision to limit its review of security concerns to switched services was appropriate and sound.

LRT observed that switched services are not the only channels used to transmit voice, picture and data communications for personal use, including clandestine or coded transmissions. Applicants did not refute these observations in the Opposition.

It is clear that Intelsat circuits can be utilized in numerous ways to transmit all types of traffic. LRT believes that the Commission's policy of limiting concern to switched traffic is a policy decision firmly rooted in the 20<sup>th</sup> Century and erroneous, especially given present day technology, and the unfortunate increased threat levels which must be encountered by US citizens on a regular basis. The Applicants did not dispute this point in any manner.

LRT renews its request that the Commission and Executive Branch together with the newly established Department of Homeland Security establish a special task force to assess whether the Applications raise national security implications.<sup>12</sup> Such an assessment should review all existing and projected telecommunications technologies, and as a threshold matter, reject the concept that security issues should only be found to relate to switched circuits.

Error 10 : The Past Illegal Actions of Comsat and Lockheed Warrant the Divestiture of All Proceeds Received from the Sale of the Assignment Transaction

In its Petition, LRT argued that the Commission should adopt an order requiring Lockheed to pay to the Commission all net proceeds from its sale of Comsat assets for the purpose of

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<sup>12</sup> LRT Provisional Petition at 32.

establishing a Digital Conversion Fund and various other conditions.<sup>13</sup> LRT proposes that the proceeds be utilized to fund loans and grants to small market, minority owned and public TV stations and cable systems. The Commission dismissed the LRT proposal stating that it was “not persuaded to adopt LRT’s proposal...” Intelsat Order.

LRT maintains that Commission’s conclusion is error.<sup>14</sup> Here, too, the Applicants failed to address the LRT position, choosing simply to restate the Commission’s dismissal language. This position is clearly understandable, given the fact that Lockheed cannot defend in any manner the several premises on which LRT has based its position.

LRT has fully demonstrated in this and a series of other prior proceedings that Comsat and its owner, Lockheed, have purposely, repeatedly and routinely violated federal laws, and rules and policies administered by the Commission. In short, the actions of Comsat and Lockheed have made a mockery of Commission rules and regulations, as the companies have regularly and repeatedly misrepresented, falsely represented and concealed information in numerous proceedings.

For over six years, LRT and others, including PanAmSat and Stratos Communications, have presented evidence of Comsat’s serious misconduct to the Commission. But, time and again, the company’s actions have been supported, condoned or ignored. Only on one occasion, where Comsat fully admitted filing false information with the Commission, was the matter referred to the Enforcement Bureau—where it remains today.

The fact remains that the record shows Comsat to have been guilty of operating a criminal enterprise, intentionally filing a series of false and misleading documents with the Commission, and even operating a business which distributed pornography for over a decade, reaching one million hotel rooms<sup>15</sup>. Such egregious conduct should be met with the sternest type of penalties on the part of the Commission. A sanctions order requiring Lockheed (a willing abettor of Comsat’s illegal activity) to divest all net proceeds realized

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<sup>13</sup> LRT Provisional Petition at 16; LRT Reply at 6-8.

<sup>14</sup> In the Petition, LRT cited *See Comsat-Lockheed Reconsideration Order*, FCC 02-197, at paras. 5 and 20. *See also Comsat Corporation*, FCC 97-422, 13 FCC Rcd 2714, 2927, para. 33 (1998), *recon. denied*, 15 FCC Rcd 19516 (2000), in which the Commission emphasized that Comsat was a private corporation not subject to government management. LRT noted that this finding is erroneous. While Comsat is owned by Lockheed, it remains a government sponsored enterprise under the supervision and control of the Executive and Legislative Departments. It was for this very reason that the Lockheed and Comsat had to seek Congressional action to authorize their merger. Applicants failed to address this matter in the Opposition.

<sup>15</sup> Fifty percent of the movies transmitted by the Comsat hotel business constituted what has been termed as pornography by the New York Times and Forbes Magazine. These actions of this government sponsored enterprise directly violated the public interest standard of the Satellite Act and in the process, repeatedly demeaned women, endangered children, and affronted American families.

from the sale of Comsat assets would constitute such an appropriate penalty.<sup>16</sup>

Comsat, a government sanctioned entity, operating for years in the shadow of national security interests, has found ways thus far to escape sanctions by the Commission. It is clearly time that Comsat be properly sanctioned by the Commission.

The intervention requested by LRT is long overdue. Indeed, LRT continues to believe that the Commission has (or can gain) access to information of illegal conduct on the part of Comsat officials, far beyond the evidence of serious violations cited in past pleadings.

The charges placed on the record by LRT against Comsat- including criminal convictions, filing of false information, deliberate concealment of criminal proceedings, fraudulent statements, misrepresentation, abuse of power- are all currently before the Commission. This truly outrageous record of illegal conduct on the part of a government sponsored enterprise must result in the adoption of fines, forfeitures and sanctions.

It is right and proper for the Commission to revoke all Comsat licenses and order that proceeds received from the sale of all of its assets be turned over to the proposed Digital Conversion Fund to aid the technical upgrading of small market, minority owned and public broadcasting stations,

As the Congressionally designated supervisor of Comsat's commercial activities, the Commission well knows that all of Comsat's assets, including its operating divisions and its shares in Intelsat, Inmarsat and New Skies, were purchased with monies largely derived from the company's monopoly over the sale of Intelsat facilities to domestic telecommunications carriers. For this reason, and the fact that Comsat first and last is a government sponsored enterprise, its assets should be deemed to be the property of the United States.

LRT recognizes that to date, the Commission has not found "merit" in LRT's proposals to strip Comsat (and Lockheed) of proceeds received as a result of the satellite company's liquidation. LRT remains of the position that in the interest of fundamental fairness and justice, the Commission must order the divestiture of all Comsat liquidation proceeds, monies which, at the end of the day, should be viewed as assets of the people of the United States, and resources sorely needed to be placed to the purpose advocated by the Digital Conversion Fund. Certainly, the owners and operators of small market, minority-owned and

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<sup>16</sup> As LRT has stated in the past, the Commission is fully authorized pursuant to the Comsat Satellite Act to order such a divestiture of liquidation proceeds. (47 USC § 701 ). The Commission did not dispute this position in the Intelsat Order.

public television stations which lack the financial resources to upgrade their facilities as mandated by the Commission must see great “merit” in the LRT proposal.

### 3. EXPANSION OF PURVIEW OF DIGITAL CONVERSION FUND

For over four years, LRT has proposed that the Commission order the divestiture of proceeds realized from the sale of Comsat assets with the monies to be administered by the Digital Conversion Fund for the benefit of small market, minority owned and public television stations and cable systems to speed the upgrading of television and cable outlets throughout the country. The successful establishment and funding of the Digital Conversion Fund has become a major goal of LRT.

On December 30, 2002, LRT was able to participate in the wholesale expansion of this proposed funding program by becoming one of the founders of Communications Science and Technologies, Inc. (“CST”). Among CST’s commercial objectives is the development of technologies and related undertakings to facilitate the conversion of the nation’s telecommunications infrastructure to the digital transmission standard and, in the process, to incorporate other technological advances to utilize telecommunications facilities economically and efficiently, including increased personal security applications, which have taken on far greater importance following the tragic events of September 11.

As a first step, on January 2, 2003, CST filed Comments in the 2002 Biennial Regulatory Review Proceeding –Review of Broadcast Ownership Rules (Docket No. 02-277)<sup>17</sup>. At Section 5 of the filing, CST has proposed that the Commission adopt a new rule requiring broadcasters and cable operators to support the all-industry Digital Conversion Fund to help finance the digital conversion of qualified television stations and cable systems throughout the country.

Specifically, CST has proposed that the Commission require all broadcast companies and cable systems that increase their operations as a result of the ownership rule changes adopted in the Biennial Proceeding to loan a percentage of their expansion expenditures (whether incurred through the purchase or construction of facilities) to the Digital Conversion Fund. Similar to LRT, CST proposes that the fund monies be advanced to small market, minority owned and public television stations and cable systems qualifying for the loans.

In essence, the CST proposal seeks to establish a means for the nation’s privately owned TV and cable industries to assist in the funding of digital conversion of underfunded stations

and systems without resorting to public funding. In its filing, CST underscored the immediate need for the Digital Conversion Fund noting, "Without such a funding source, the only likely results of the present situation will be appeals for Congressional funding in the form of grants (already advocated by PBS stations), an inordinate delay in completing the conversion of facilities, or the termination of operations by licensees and systems lacking ready access to capital. None of these alternatives should be viewed as acceptable."<sup>18</sup>

As an additional part of its plans, CST has also confirmed that it will shortly supplement its Commission filing with an expanded proposal, utilizing unique set of technologies to join local communities, cable systems and telephone companies in establishing a common infrastructure to bring digital communications and security facilities to all residential and commercial units served with public utilities. Under the CST plan, the availability of such a common delivery system will facilitate the digital conversion of existing cable systems and telephone companies, especially in the small and mid-sized markets throughout the country. (See CST Press Release, attached as Exhibit 3.)

The CST proposal can significantly expand the overall scope and capabilities of the Digital Conversion Fund which has as its purpose the speedy deployment of advanced digital infrastructure, viewed by many as a key concern facing the Commission today.

LRT notes that recent filings by television licensees seeking extensions of their construction permit due dates to upgrade their facilities have underscored this critical need for new sources of funding. Industry surveys have shown that over 50% of the country's TV stations lack ready access to the capital necessary to upgrade their technical plants to the digital standard. A like number of small market cable systems are unable to fund the conversion of their existing analogue systems to digital. Also, it has been determined that a majority of independent telephone companies serving small and mid-sized markets do not have the financial resources necessary to upgrade to digital transmission.

The LRT proposal to divest all Comsat liquidation revenues directly parallels the steps being undertaken by CST. Overall, the LRT and CST plans will produce significant sources of funds for the Digital Conversion Fund , which will then be able to extend loans to qualified TV stations, cable systems and telephone companies. Under the combined CST/LRT plans, the 3-7 year loans would carry interest at commercial rates, and repayment would be guaranteed by the US Government.

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<sup>17</sup> See [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6513400949](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6513400949)



As the country enters the digital age, it truly stands poised to welcome in an era of literally limitless supply of programming. These expanded transmission capabilities can give the average American viewer ready access to hundreds of channels of programming, designed to meet every conceivable need and interest. Thanks to the foresighted efforts of key industry leaders, the necessary transmission and reception equipment has been developed and is available. Unfortunately, what frustrates the full realization of digital transmission is the availability of funds required to upgrade current TV stations and cable systems. The funding of the Digital Conversion Fund as proposed by LRT can become a key means for closing the funding gap.

LRT will participate as CST enlists support from throughout the TV, cable, telephone and related industries for the overall Digital Conversion Fund proposal.

#### 4. CONCLUSION

When LRT first organized some years ago, it focused on a series of what it viewed to be outrageous illegal actions undertaken by Comsat against its members and others. LRT resolved to follow a course to achieve a series of priorities. LRT's five primary objectives were as follows:

1. Objective: To secure rulings to terminate Comsat's involvement in the distribution of pornography. Begun in December 1995 in a filing with the Commission, LRT alone sought this change in Comsat's operations.

Status: Comsat spun off this business to its shareholders along with its other entertainment assets in June 1997. Comsat realized no income on the distribution of these assets.

2. Objective: To secure rulings to bring about changes in Comsat management for a series of violations of the Satellite Act . LRT alone sought these rulings.

Status: Between January 1997 and August 2000, all senior managers of Comsat were discharged, left voluntarily or were denied renewal of contracts.

3. Objective: To secure rulings to terminate Comsat's illegal operation of BelCom, Inc., its Russian subsidiary.

Status: Beginning in 1998, Comsat ceased involvement in BelCom in stages, ending in December 2001 with the transfer of assets to a successor in interest.

4. Objective: To secure rulings sanctioning Comsat for its series of violations of Commission rules and regulations. LRT alone pursued these matters.

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<sup>18</sup> CST Comments in 2002 Biennial Regulatory Review Proceeding, Docket No. 02-277,p. 17.

Status: Comsat remains subject to review for its admitted submission of false information to the Commission. Matter remains before the Enforcement Bureau.

5. Objective: To secure order divesting all proceeds from the liquidation of Comsat.<sup>19</sup> as proper sanctions for Comsat's criminal and other violations; its failure to repay any of the in excess of \$20 billion in monopoly proceeds received over 35 years and the failure of Lockheed to properly fund the restoration of Comsat as represented to Congress. LRT alone has sought the divestiture of the Comsat liquidation proceeds.

Status: Open.

When LRT began its operations, Comsat was proceeding daily on a course of action, which regularly involved disregarding, manipulating and, on repeated instances, violated of the rule of law. Over the course of time, LRT and its members were victimized by Comsat. The company spent literally millions of dollars employing a veritable army of lawyers<sup>20</sup> in pursuing what has been described as a venomous campaign, even a vendetta, against LRT in federal and state courts, before the Commission, the Congress and the press. Through all of continuous and unrestrained attacks, as is readily apparent, LRT resolved to persevere as it sought vindication and justice.

LRT and its members have been subjected to unjust personal attacks and character assassination, which have been endured, although not without some amount of discomfort. Unfortunately, the Commission has played a part, as, in a series of orders, it has publicly<sup>21</sup> supported Comsat's attack campaign and taken the position that LRT's own actions have constituted "harassment" of Comsat. As LRT has noted in its pleadings, such findings are totally unjustified and, in fact, constitute groundless, personal attacks against the LRT members.<sup>22</sup>

Further, it must be readily apparent to any reviewer of the facts that LRT could never be accused of harassing Comsat, a company that has admitted to operating a criminal enterprise, filing false and incomplete information with the Commission, failing to notify the Commission – in a series of filings over 18 months- that the company was the subject of a criminal grand jury proceeding , not to mention engaging in the distribution of pornography to

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<sup>19</sup> The initial objective was to seek divestiture of all proceeds realized by Comsat from the privatization of Intelsat, Inmarsat and New Skies Satellite.

<sup>20</sup> Comsat employed 14 law firms in attacking LRT and its members.

<sup>21</sup> Privately, Commission staff members have conveyed their sympathy for the unfair treatment to which LRT members have been subjected by Comsat management. And at a time when it ceased its existence as an independent company, one commission staffer even noted that LRT should relish the fact that its principals had managed to outlive Comsat.

one million rooms throughout the country.

For its part, LRT alone has worked assiduously to bring about needed reforms by seeking the Commission's intervention against Comsat and its irresponsible, rogue-style senior managers. Without question, this six years of effort which should bring LRT and its members commendations from the Commission, not censure.

**LRT's private citizen efforts have contributed to ridding the telecommunications industry of a company which long ago diverted to follow a course one terribly wrong, taken there by a base, immoral, amoral and, as it turns out, equally incompetent senior management. Having succeeded in bringing about these changes, Lone more objective remains: the securing of the Comsat liquidation divestiture order.**

**In the end, the LRT plan, now to be combined with the expansion elements of CST, for funding and operating the Digital Conversion Fund, offers the only present means for closing the serious funding gap which prevents the small market, minority owned and public television station and cable systems from entering the digital age.**

To date, no plan- save for resort to the public treasury- has been offered to assist the small market, underfunded, minority owned and public broadcasters and cable operators converting to the digital standard.

LRT proposes to use the funds realized from the liquidation of Comsat for this very purpose. It is reasonably estimated that in excess of \$3 million will be obtained from the sale of Comsat assets. This amount will go a long way toward closing the funding gap which stands in the way of the early completion of the transition to the digital standard.

Also, the LRT plan will balance the real harm brought about by Comsat throughout its final years. Here we have a company founded by Congress winding up engaging in the distribution of pornography and criminal fraud and obstruction, not to mention serial violations of the Commission's rules and regulations.

Comsat should not be allowed to pass into oblivion as billions are realized by its corporate owners. Rather, in response to LRT's long standing petition, the Commission should act to turn Comsat's disastrous past into a legacy of achievement as liquidation proceeds are turned to a meaningful purpose.

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<sup>22</sup> LRT has petitioned the Commission to dismiss and annul the referenced Orders against LRT and its

The Intelsat Order represents the latest in a series of rulings stretching over the last six years, which, in the view of LRT, have consistently disregarded, dismissed and concealed evidence of unethical behavior, malfeasance, misfeasance, and illegal offenses (including criminal convictions) on the part of Comsat, a company which, first and foremost, was and continues to this day to be a government sponsored enterprise.

In its Order at ¶ 52, in rejecting LRT proposal to impose stern penalties for Comsat's past behavior, the Commission identifies Lockheed as a "private entity" as grounds for its decision to refrain from adopting severe sanctions as proposed. The fact remains however, that Comsat is the primary party guilty of the past violations, and Comsat, as a government sponsored entity, is required by law to act in the public interest. Further, it remains the Commission's obligation to supervise Comsat and, in so doing, to enforce this public interest standard and to impose appropriate penalties for the company's violations.

For the past six years, the Commission has, again in LRT's view, woefully failed to carry out its delegated duties with respect to properly regulating and policing Comsat's illegal, unethical and immoral<sup>23</sup> actions. As Comsat stands on the brink of extinction<sup>24</sup>, the Commission must step forward and properly execute its delegated responsibilities in sanctioning the past illegal conduct of Comsat, Lockheed and their key executives.

It is the Commission itself, which must accept full responsibility for failing to properly find Comsat guilty of repeatedly and intentionally violating its rules and regulations. Indeed, Comsat's actions throughout the proceedings in which LRT has participated have made an utter mockery of the rule of law as administered by the Commission. Comsat has, among other illegal activities, consistently and purposely evaded and violated disclosure rules, dissembled and misrepresented facts, disregarded ex parte rules, filed false and misleading information and withheld vital and relevant evidence from the Commission.

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members.

<sup>23</sup> LRT views Comsat's past status as the country's largest distributor of pornography to 1 million hotel room throughout the country to constitute both illegal and immoral behavior (in violation of the public interest standard of the Satellite Act).

<sup>24</sup> Lockheed is currently liquidating Comsat. LRT views this action as a direct violation of Lockheed's representations to Congress undertaking to invest financial and manpower resources to restore Comsat.

Over the past six years, LRT, and LRT alone, has placed evidence on the record before the Commission establishing the following:

1. Comsat's former Florida subsidiary (Electromechanical Systems Inc. ("EMS")) on July 17, 2000 entered a plea agreement with the US Attorney for the Middle District of Florida, admitting that it had defrauded the US Department of Defense and US Navy and obstructed justice in selling communications equipment for use on Navy ships. The Comsat company was fined and ordered to pay nearly \$10 million in restitution and was placed on probation for five years. This information was not revealed to the Commission prior to its initial grant approving the Lockheed-Comsat merger on July 27, 2000. (See *USA v. Electromechanical Systems, Inc.*, Criminal No. 8:00-CR-00253 ( US District Court, Middle District of Florida (Tampa Division) ("*USA v. EMS*"). LRT has provided documentary evidence establishing that Comsat filed false applications which failed to notify the Commission of these criminal activities.
2. Contrary to the Comsat/Lockheed representations, LRT has established through the submission of documentary evidence secured through the Secretary of State of Florida that senior management of Comsat exercised control over the Comsat Florida subsidiary, raising serious issues of liability. LRT has provided documentary evidence establishing that Comsat filed false applications which failed to notify the Commission of these illegal activities.
3. Lockheed/Comsat have admitted to filing false information with the Commission, misrepresenting the licensee status of the Comsat Florida subsidiary. This matter has been referred to the Enforcement Bureau for adjudication.
4. Lockheed/Comsat failed to inform the Commission that Comsat was made the subject of a Federal False Claim action related to the actions of its Florida subsidiary, involving fraud, misrepresentation, intimidation and coercion related to the company's involvement in defrauding the Defense Department and Navy and illegally discharging company employees who sought to report the illegal activity to authorities. This litigation was ultimately settled by Lockheed through payment of substantial damages to the plaintiffs. (*United States ex rel. Beattie et al v. Comsat Corporation et al Case No. (1996CV00966) ("USA v Comsat")*). LRT has provided

documentary evidence establishing that Comsat filed false applications which failed to notify the Commission of these illegal activities.

5. Since December 29, 1995, LRT has had a Petition for Rule Making before the Commission seeking the adoption of a rule to prohibit Comsat and other companies from distributing obscene films over closed circuit cable tv type distribution systems in hotels and other similar public venues without proper scrambling or other signal regulating equipment to assure that such programming is not made available to children. Comsat's participation in the distribution of obscene moves to hotels directly violated the public interest standard of the Communications Satellite Act.

Other than referring one of the above series of violations to the Enforcement Bureau <sup>25</sup>(a matter which remains under review), the Commission has consistently failed to properly enforce its rules and regulations with respect to Comsat, a government sponsored entity.

What other private entity could expect to avoid strict censure (including license revocation), where it deliberately and repeatedly failed to inform the Commission that one of its subsidiaries (in fact, a subsidiary holding a Commission license) was the subject of a grand jury proceeding for defrauding the US Government and obstructing justice? Yet, in the case of Comsat, in this proceeding and other prior actions, the Commission has completely disregarded these most serious of offenses.

Comsat's egregious conduct must be punished. And this action must be accomplished in this proceeding before Comsat and its officers and directors slip quietly away into the night, having successfully dismantled this once proud example of US science and technology and divided the resulting significant proceeds among themselves.

LRT respectfully requests the Commission to revoke the Intelsat Order and undertake the series of actions advocated above, including the revocation of all Comsat licenses with proceeds of the liquidation to be turned over to the Digital Conversion Fund to assist the financing of the upgrading of the technical facilities of small market, minority owned and public television stations to the new HDTV standards.

Respectfully submitted,

/s/ William L. Whitely

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Trustee

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<sup>25</sup> Comsat admitted to filing false information concerning its licensee status of its subsidiary, EMS.

